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TRADE AND DEVELOPMENT BOARD

GENERALIZED SYSTEM OF PREFERENCES

Scheme of the United States of America

Renewal

The UNCTAD secretariat has received from the Office of the United States Trade Representative the attached extract from the Congressional Record - House (H9610, 1 August 1996) concerning renewal of the United States generalized system of preferences (GSP) scheme.

GE.96.51707

Subtitle J - Generalized System of Preferences

SEC.195L SHORT TITLE.

This subtitle may be cited as the "GSP Renewal Act of 1996".

SEC. 196L. GENERALIZED SYSTEM OF PREFERENCES.

(a) IN GENERAL - Title V of the Trade Act of 1974 is amended to read as follows:

"TITLE V - GENERALIZED SYSTEM OF PREFERENCES

"SEC. 501. AUTHORITY TO EXTEND PREFERENCES.

"The President may provide duty-free treatment for any eligible article from any beneficiary developing country in accordance with the provisions of this title. In taking any such action, the President shall have due regard for -

"(1) the effect such action will have on furthering the economic development of developing countries through the expansion of their exports;

"(2) the extent to which other major developed countries are undertaking a comparable effort to assist developing countries by granting generalized preferences with respect to imports of products of such countries;

"(3) the anticipated impact of such action on United States producers of like or directly competitive products; and

"(4) the extent of the beneficiary developing country's competitiveness with respect to eligible articles.

"SEC. 502. DESIGNATION OF BENEFICIARY DEVELOPING COUNTRIES.

"(a) AUTHORITY TO DESIGNATE COUNTRIES -

"(1) BENEFICIARY DEVELOPING COUNTRIES - The President is authorized to designate countries as beneficiary developing countries for purposes of this title.

"(2) LEAST-DEVELOPED BENEFICIARY DEVELOPING COUNTRIES - The President is authorized to designate any beneficiary developing country as a least-developed beneficiary developing country for purposes of this title, based on the considerations in section 501 and subsection (c) of this section.

"(b) COUNTRIES INELIGIBLE FOR DESIGNATION -

"(1) SPECIFIC COUNTRIES - The following countries may not be designated as beneficiary developing countries for purposes of this title:

"(A) Australia
"(B) Canada
"(C) European Union member states
"(D) Iceland
"(E) Japan
"(F) Monaco
"(G) New Zealand
"(H) Norway
"(I) Switzerland.

"(2) OTHER BASES FOR INELIGIBILITY - The President shall not designate any country a beneficiary developing country under this title if any of the following applies:

"(A) Such country is a Communist country, unless -

"(i) the products of such country receive non-discriminatory treatment,

"(ii) such country is a WTO Member (as such term is defined in section 2(10) of the Uruguay Round Agreements Act) (19 U.S.C. 3501(10) and a member of the International Monetary Fund, and

"(iii) such country is not dominated or controlled by international communism.

"(B) Such country is a party to an arrangement of countries and participates in any action pursuant to such arrangement, the effect of which is -

"(i) to withhold supplies of vital commodity resources from international trade or to raise the price of such commodities to an unreasonable level, and

"(ii) to cause serious disruption of the world economy.

"(C) Such country affords preferential treatment to the products of a developed country, other than the United States, which has, or is likely to have, a significant adverse effect on United States commerce.

"(D)(i) Such country -

"(I) has nationalized, expropriated, or otherwise seized ownership or control of property, including patents, trademarks, or copyrights, owned by a United States citizen or by a corporation, partnership, or association which is 50 per cent or more beneficially owned by United States citizens,

"(II) has taken steps to repudiate or nullify an existing contract or agreement with a United States citizen or a corporation, partnership, or association which is 50 per cent or more beneficially owned by United States citizens, the effect of which is to nationalize, expropriate, or otherwise seize ownership or control of property, including patents, trademarks, or copyrights, so owned, or

"(III) has imposed or enforced taxes or other exactions, restrictive maintenance or operational conditions, or other measures with respect to property, including patents, trademarks, or copyrights, so owned, the effect of which is to nationalize, expropriate, or otherwise seize ownership or control of such property, unless clause (ii) applies,

"(ii) this clause applies if the President determines that -

"(I) prompt, adequate, and effective compensation has been or is being made to the citizen, corporation, partnership, or association referred to in clause (i),

"(II) good faith negotiations to provide 'prompt', 'adequate' and 'effective' compensation under the applicable provisions of international law are in progress, or the country described in clause (i) is otherwise taking steps to discharge its obligations under international law with respect to such citizen, corporation, partnership, or association, or

"(III) a dispute involving such citizen, corporation, partnership, or association over compensation for such a seizure has been submitted to arbitration under the provisions of the Convention for the Settlement of Investment Disputes, or in another mutually agreed upon forum, and the President promptly furnishes a copy of such determination to the Senate and House of Representatives.

"(E) Such country fails to act in good faith in recognizing as binding or in enforcing arbitral awards in favor of United States citizens or a corporation, partnership, or association which is 50 per cent or more

beneficially owned by United States citizens, which have been made by arbitrators appointed for each case or by permanent arbitral bodies to which the parties involved have submitted their dispute.

"(F) Such country aids or abets, by granting sanctuary from prosecution to, any individual or group which has committed an act of international terrorism.

"(G) Such country has not taken or is not taking steps to afford internationally recognized worker rights to workers in the country (including any designated zone in that country).

Subparagraphs (D), (E), (F), and (G) shall not prevent the designation of any country as a beneficiary developing country under this title if the President determines that such designation will be in the national economic interest of the United States and reports such determination to the Congress with the reasons therefor.

"(c) FACTORS AFFECTING COUNTRY DESIGNATION - In determining whether to designate any country as a beneficiary developing country under this title, the President shall take into account -

"(1) an expression by such country of its desire to be so designated;

"(2) the level of economic development of such country, including its per capita gross national product, the living standards of its inhabitants and any other economic factors which the President deems appropriate;

"(3) whether or not other major developed countries are extending generalized preferential tariff treatment to such country;

"(4) the extent to which such country has assured the United States that it will provide equitable and reasonable access to the markets and basic commodity resources of such country and the extent to which such country has assured the United States that it will refrain from engaging in unreasonable export practices;

"(5) the extent to which such country is providing adequate and effective protection of intellectual property rights;

"(6) the extent to which such country has taken action to -

"(A) reduce trade distorting investment practices and policies (including export performance requirements); and

"(B) reduce or eliminate barriers to trade in services; and

"(7) whether or not such country has taken or is taking steps to afford to workers in that country (including any designated zone in that country) internationally recognized worker rights.

"(d) WITHDRAWAL, SUSPENSION, OR LIMITATION OF COUNTRY DESIGNATION -

"(1) IN GENERAL - The President may withdraw, suspend, or limit the application of the duty-free treatment accorded under this title with respect to any country. In taking any action under this subsection, the President shall consider the factors set forth in section 501 and subsection (c) of this section.

"(2) CHANGED CIRCUMSTANCES - The President shall, after complying with the requirements of subsection (f)(2), withdraw or suspend the designation of any country as a beneficiary developing country if, after such designation, the President determines that as the result of changed circumstances such country would be barred from designation as a beneficiary developing country under subsection (b)(2). Such country shall cease to be a beneficiary developing

country on the day on which the President issues an Executive order or Presidential proclamation revoking the designation of such country under this title.

"(3) ADVICE TO CONGRESS - The President shall, as necessary, advise the Congress on the application of section 501 and subsection (c) of this section, and the actions the President has taken to withdraw, to suspend, or to limit the application of duty-free treatment with respect to any country which has failed to adequately take the actions described in subsection (c).

"(e) MANDATORY GRADUATION OF BENEFICIARY DEVELOPING COUNTRIES - If the President determines that a beneficiary developing country has become a 'high income' country, as defined by the official statistics of the International Bank for Reconstruction and Development, then the President shall terminate the designation of such country as a beneficiary developing country for purposes of this title, effective on January 1 of the second year following the year in which such determination is made.

"(f) CONGRESSIONAL NOTIFICATION -

"(I) NOTIFICATION OF DESIGNATION -

"(A) IN GENERAL - Before the President designates any country as a beneficiary developing country under this title, the President shall notify the Congress of the President's intention to make such designation, together with the considerations entering into such decision.

"(B) DESIGNATION AS LEAST-DEVELOPED BENEFICIARY DEVELOPING COUNTRY - At least 60 days before the President designates any country as a least-developed beneficiary developing country, the President shall notify the Congress of the President's intention to make such designation.

"(2) NOTIFICATION OF TERMINATION - If the President has designated any country as a beneficiary developing country under this title, the President shall not terminate such designation unless, at least 60 days before such termination, the President has notified the Congress and has notified such country of the President's intention to terminate such designation, together with the considerations entering into such decision.

"SEC. 503. DESIGNATION OF ELIGIBLE ARTICLES.

"(a) ELIGIBLE ARTICLES -

"(1) DESIGNATION -

"(A) IN GENERAL - Except as provided in subsection (b), the President is authorized to designate articles as eligible articles from all beneficiary developing countries for purposes of this title by Executive order or Presidential proclamation after receiving the advice of the International Trade Commission in accordance with subsection (e).

"(B) LEAST-DEVELOPED BENEFICIARY DEVELOPING COUNTRIES - Except for articles described in subparagraphs (A), (B), and (E) of subsection (b)(1) and articles described in paragraphs (2) and (3) of subsection (b), the President may, in carrying out section 502 (d)(1) and subsection (c)(1) of this section, designate articles as eligible articles only for countries designated as least-developed beneficiary developing countries under section 502(a)(2) if, after receiving the advice of the International Trade Commission in accordance with subsection (e) of this section, the President determines that such articles are not import-sensitive in the context of imports from least-developed beneficiary developing countries.

"(C) THREE-YEAR RULE - If, after receiving the advice of the International Trade Commission under subsection (e), an article has been formally considered for designation as an eligible article under this title and denied such designation, such article may not be reconsidered for such designation for a period of 3 years after such denial.

"(2) RULE OF ORIGIN -

"(A) GENERAL RULE - The duty-free treatment provided under this title shall apply to any eligible article which is the growth, product, or manufacture of a beneficiary developing country if -

(i) that article is imported directly from a beneficiary developing country into the customs territory of the United States; and

(ii) the sum of -

"(I) the cost or value of the materials produced in the beneficiary developing country or any two or more such countries that are members of the same association of countries and are treated as one country under section 507(2), plus

"(II) the direct costs of processing operations performed in such beneficiary developing country or such member countries, is not less than 35 per cent of the appraised value of such article at the time it is entered.

"(B) EXCLUSIONS - An article shall not be treated as the growth, product, or manufacture of a beneficiary developing country by virtue of having merely undergone -

"(i) simple combining or packaging operations, or

"(ii) mere dilution with water or mere dilution with another substance that does not materially alter the characteristics of the article.

"(3) REGULATIONS - the Secretary of the Treasury, after consulting with the United States Trade Representative, shall prescribe such regulations as may be necessary to carry out paragraph (2), including, but not limited to, regulations providing that, in order to be eligible for duty-free treatment under this title, an article -

"(A) must be wholly the growth, product, or manufacture of a beneficiary developing country, or

"(B) must be a new or different article of commerce which has been grown, produced, or manufactured in the beneficiary developing country.

"(b) ARTICLES THAT MAY NOT BE DESIGNATED AS ELIGIBLE ARTICLES -

"(1) IMPORT SENSITIVE ARTICLES - The President may not designate any article as an eligible article under subsection (a) if such article is within one of the following categories of import-sensitive articles:

"(A) Textile and apparel articles which were not eligible articles for purposes of this title on January 1, 1994, as this title was in effect on such date,

"(B) Watches, except those watches entered after June 30, 1989, that the President specifically determines, after public notice and comment, will not cause material injury to watch or watch band, strap, or bracelet manufacturing and assembly operations in the United States or the United States insular possessions,

"(C) Import-sensitive electronic articles,

"(D) Import-sensitive steel articles.

"(E) Footwear, handbags, luggage, flat goods, work gloves, and leather wearing apparel which were not eligible articles for purposes of this title on January 1, 1995, as this title was in effect on such date,

"(F) Import-sensitive semimanufactured and manufactured glass products,

"(G) Any other articles which the President determines to be import-sensitive in the context of the Generalized System of Preferences.

"(2) ARTICLES AGAINST WHICH OTHER ACTIONS TAKEN - An article shall not be an eligible article for purposes of this title for any period during which such article is the subject of any action proclaimed pursuant to section 203 of this Act (19 U.S.C.2253) or section 232 or 351 of the Trade Expansion Act of 1962 (19 U.S.C. 1862, 1981).

"(3) AGRICULTURAL PRODUCTS - No quantity of an agricultural product subject to a tariff-rate quota that exceeds the in-quota quantity shall be eligible for duty-free treatment under this title.

"(c) WITHDRAWAL, SUSPENSION, OR LIMITATION OF DUTY-FREE TREATMENT: COMPETITIVE NEED LIMITATION -

"(1) IN GENERAL - The President may withdraw, suspend, or limit the application of the duty-free treatment accorded under this title with respect to any article, except that no rate of duty may be established with respect to any article pursuant to this subsection other than the rate which would apply but for this title. In taking any action under this subsection, the President shall consider the factors set forth in sections 501 and 502(c).

"(2) COMPETITIVE NEED LIMITATION -

"(A) BASIS FOR WITHDRAWAL OF DUTY-FREE TREATMENT -

"(i) IN GENERAL - Except as provided in clause (ii) and subject to subsection (d), whenever the President determines that a beneficiary developing country has exported (directly or indirectly) to the United States during any calendar year beginning after December 31, 1995 -

"(I) a quantity of an eligible article having an appraised value in excess of the applicable amount for the calendar year, or

"(II) a quantity of an eligible article equal to or exceeding 50 per cent of the appraised value of the total imports of that article into the United States during any calendar year, the President shall, not later than July 1 of the next calendar year, terminate the duty-free treatment for that article from that beneficiary developing country.

"(ii) ANNUAL ADJUSTMENT OF APPLICABLE AMOUNT - For purposes of applying clause (i), the applicable amount is -

"(I) for 1996, $75,000,000, and

"(II) for each calendar year thereafter, an amount equal to the applicable amount in effect for the preceding calendar year plus $5,000,000.

"(B) COUNTRY DEFINED - For purposes of this paragraph, the term 'country' does not include an association of countries which is treated as one country under section 507(2), but does include a country which is a member of any such association.

"(C) REDESIGNATIONS - A country which is no longer treated as a beneficiary developing country with respect to an eligible article by reason of subparagraph (A) may, subject to the considerations set forth in sections 501 and 502, be redesignated a beneficiary developing country with respect to such article if imports of such article from such country did not exceed the limitations in subparagraph (A) during the preceding calendar year.

"(D) LEAST-DEVELOPED BENEFICIARY DEVELOPING COUNTRIES - Subparagraph (A) shall not apply to any least-developed beneficiary developing country.

"(E) ARTICLES NOT PRODUCED IN THE UNITED STATES EXCLUDED - Subparagraph (A)(i)(II) shall not apply with respect to any eligible article if a like or directly competitive article was not produced in the United States on January 1, 1995.

"(F) DE MINIMIS WAIVERS -

"(i) IN GENERAL - The President may disregard subparagraph (A)(i)(II) with respect to any eligible article from any beneficiary developing country if the aggregate appraised value of the imports of such article into the United States during the preceding calendar year does not exceed the applicable amount for such preceding calendar year.

"(ii) APPLICABLE AMOUNT - For purposes of applying clause (i), the applicable amount is -

"(I) for calendar year 1996, $13,000,000, and

"(II) for each calendar year thereafter, an amount equal to the applicable amount in effect for the preceding calendar year plus $500,000.

"(d) WAIVER OF COMPETITIVE NEED LIMITATION -

(1) IN GENERAL - The President may waiver the application of subsection (c)(2) with respect to any eligible article of any beneficiary developing country if, before July 1 of the calendar year beginning after the calendar year for which a determination described in subsection (c)(2)(A) was made with respect to such eligible article, the President -

"(A) receives the advice of the International Trade Commission under section 332 of the Tariff Act of 1930 on whether any industry in the United States is likely to be adversely affected by such waiver,

"(B) determines, based on the considerations described in sections 501 and 502(c) and the advice described in subparagraph (A), that such waiver is in the national economic interest of the United States, and

"(C) publishes the determination described in subparagraph (B) in the Federal Register.

"(2) CONSIDERATIONS BY THE PRESIDENT - In making any determination under paragraph (1), the President shall give great weight to -

"(A) the extent to which the beneficiary developing country has assured the United States that such country will provide equitable and reasonable access to the markets and basic commodity resources of such country, and

"(B) the extent to which such country provides adequate and effective protection of intellectual property rights.

"(3) OTHER BASES FOR WAIVER - The President may waive the application of subsection (c)(2) if, before July 1 of the calendar year beginning after the calendar year for which a determination described in subsection (c)(2) was made with respect to a beneficiary developing country, the President determines that -

"(A) there has been a historical preferential trade relationship between the United States and such country,

"(B) there is a treaty or trade agreement in force covering economic relations between such country and the United States, and

"(C) such country does not discriminate against, or impose unjustifiable or unreasonable barriers to, United States commerce, and the President publishes that determination in the Federal Register.

"(4) LIMITATIONS ON WAIVERS -

"(A) IN GENERAL - The President may not exercise the waiver authority under this subsection with respect to a quantity of an eligible article entered during any calendar year beginning after 1995, the aggregate appraised value of which equals or exceeds 30 per cent of the aggregate appraised value of all articles that entered duty-free under this title during the preceding calendar year.

"(B) OTHER WAIVER LIMITS - The President may not exercise the waiver authority provided under this subsection with respect to a quantity of an eligible article entered during any calendar year beginning after 1995, the aggregate appraised value of which exceeds 15 per cent of the aggregate appraised value of all articles that have entered duty-free under this title during the preceding calendar year from those beneficiary countries which for the preceding calendar year -

"(i) had a *per capita* gross national product (calculated on the basis of the best available information, including that of the International Bank for Reconstruction and Development) of $5,000 or more; or

"(ii) had exported (either directly or indirectly) to the United States a quantity of articles that was duty-free under this title that had an aggregate appraised value of more than 10 per cent of the aggregate appraised value of all articles that entered duty-free under this title during that year.

"(C) CALCULATION OF LIMITATIONS - There shall be counted against the limitations imposed under subparagraphs (A) and (B) for any calendar year only that value of any eligible article of any country that -

"(i) entered duty-free under this title during such calendar year, and

"(ii) is in excess of the value of that article that would have been so entered during such calendar year if the limitations under subsection (c)(2)(A) applied.

"(5) EFFECTIVE PERIOD OF WAIVER - Any waiver granted under this subsection shall remain in effect until the President determines that such waiver is no longer warranted due to changed circumstances.

"(e) INTERNATIONAL TRADE COMMISSION ADVICE - Before designating articles as eligible articles under subsection (a)(I), the President shall publish and furnish the International Trade Commission, with lists of articles which may be considered for designation as eligible articles for purposes of this title. The provisions of sections 131, 132, 133, and 134 shall be complied with as though action under section 501 and this section were action under section 123 to carry out a trade agreement entered into under section 123.

"(f) SPECIAL RULE CONCERNING PUERTO RICO - No action under this title may affect any tariff duty imposed by the Legislature of Puerto Rico pursuant to section 319 of the Tariff Acto of 1930 on coffee imported into Puerto Rico.

"SEC. 504. REVIEW AND REPORT TO CONGRESS.

The President shall submit an annual report to the Congress on the status of internationally recognized worker rights within each beneficiary developing country.

"SEC. 505. DATE OF TERMINATION.

"No duty-free treatment provided under this title shall remain in effect after May 31, 1997.

"SEC. 506. AGRICULTURAL EXPORTS OF BENEFICIARY DEVELOPING COUNTRIES.

"The appropriate agencies of the United States shall assist beneficiary developing countries to develop and implement measures designed to assure that the agricultural sectors of their economies are not directed to export markets to the detriment of the production of foodstuffs for their citizenry.

"SEC. 507. DEFINITIONS.

"For purposes of this title:

"(1) BENEFICIARY DEVELOPING COUNTRY - The term 'beneficiary developing country' means any country with respect to which there is in effect an Executive order or Presidential proclamation by the President designating such country as a beneficiary developing country for purposes of this title.

"(2) COUNTRY - The term 'country' means any foreign country or territory, including any overseas dependent territory or possession of a foreign country, or the Trust Territory of the Pacific Islands. In the case of an association of countries which is a free trade area or customs union, or which is contributing to comprehensive regional economic integration among its members through appropriate means, including, but limited to, the reduction of duties, the President may by Executive order or Presidential proclamation provide that all members of such association other than members which are barred from designation under section 502(b) shall be treated as one country for purposes of this title.

"(3) ENTERED - The term 'entered' means entered, or withdrawn from warehouse for consumption, in the customs territory of the United States.

"(4) INTERNATIONALLY RECOGNIZED WORKER RIGHTS - The term 'internationally recognized worker rights' includes -

"(A) the right of association;

"(B) the right to organize and bargain collectively;

"(C) a prohibition on the use of any form of forced or compulsory labor;

"(D) a minimum age for the employment of children; and

"(E) acceptable conditions of work with respect to minimum wages, hours of work, and occupational safety and health.

"(5) LEAST-DEVELOPED BENEFICIARY DEVELOPING COUNTRY - The term 'least-developed beneficiary developing country' means a beneficiary developing country that is designated as a least developed beneficiary developing country under section 502(a)(2).".

(b) TABLE OF CONTENTS - The items relating to title V in the table of contents of the Trade Act of 1974 are amended to read as follows:

"TITLE V - GENERALIZED SYSTEM OF PREFERENCES

"Sec. 501. Authority to extend preferences.

"Sec. 502. Designation of beneficiary developing countries.

"Sec. 503. Designation of eligible articles.

"Sec. 504. Review and reports to Congress.

"Sec. 505. Date of termination.

"Sec. 506. Agricultural exports of beneficiary developing countries.

"Sec. 507. Definitions.".

SEC. 1953. EFFECTIVE DATE.

(a) IN GENERAL - The amendments made by this subtitle apply to articles entered on or after October 1, 1996.

(b) RETROACTIVE APPLICATION -

(1) GENERAL RULE - Notwithstanding section 514 of the Tariff Act of 1930 or any other provision of tax and subject to subsection (c) -

(A) any article that was entered -

(i) after July 31, 1995, and

(ii) before January 1, 1996, and

to which duty-free treatment under title V of the Trade Act of 1974 would have applied if the entry had been made on July 31, 1995, shall be liquidated or reliquidated as free of duty, and the Secretary of the Treasury shall refund any duty paid with respect to such entry, and

(B) any article that was entered -

(i) after December 31, 1995, and

(ii) before October 1, 1996, and

to which duty-free treatment under title V of the Trade Act of 1974 (as amended by this subtitle) would have applied if the entry had been made on or after October 1, 1996, shall be liquidated or reliquidated as free of duty, and the Secretary of the Treasury shall refund any duty paid with respect to such entry.

(2) LIMITATION ON REFUNDS - No refund shall be made pursuant to this subsection before October 1, 1996.

(3) ENTRY - As used in this subsection, the term "entry" includes a withdrawal from warehouse for consumption.

(c) REQUESTS - Liquidation or reliquidation may be made under subsection (b) with respect to an entry only if a request therefor is filed with the Customs Service, within 180 days after the date of the enactment of this Act, that contains sufficient information to enable the Customs Service -

(1) to locate the entry; or

(2) to reconstruct the entry if it cannot be located.